

# Notice of Allowability

Application No.

09/534,229

Examiner

Manjunath N. Rao, Ph.D.

Applicant(s)

KAWAKAMI ET AL.

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 3-15-04.
2. ☒ The allowed claim(s) is/are 13-20,23 and 24.
3. ☒ The drawings filed on 24 March 2000 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Manjunath N. Rao, Ph.D.  
Primary Examiner  
Art Unit: 1652

Art Unit: 1652

### **DETAILED ACTION**

Claims 13-20, 23-24 are currently pending and are present for examination. Claims 13-18, 23-24 are now under consideration. Claims 19-20 remain withdrawn from consideration as being drawn to non-elected invention (see below regarding rejoinder).

Applicants' amendments and arguments filed on 3-15-04, have been fully considered and are deemed to be persuasive to overcome the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. Specifically Examiner has withdrawn the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph in view of the claim amendments.

### ***Election/Restrictions***

Claims 13-18, 23-24 directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 19-20, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, is now subject to being rejoined. Claims 19-20 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Since claims 19-20 previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in Paper No. 10 (mail date 11-28-01) for claims 19-20 (only) is hereby withdrawn.

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Carpenter on 6-4-04. The application has been amended as follows:

- A) In claim 14, line 4, delete "SEQ.ID No. 1" and replace with "SEQ ID NO:1".
- B) In claim 15, line 6, insert the word "sequence" after the word "nucleotide".
- C) In claim 16, line 3, delete "SEQ.ID. No. 2" and replace with "SEQ ID NO:2".
- D) In claim 17, line 6, insert the word "sequence" after the word "nucleotide".
- E) In claim 18, line 3, delete "SEQ. ID. No. 3" and replace with "SEQ ID NO:3".
- F) In claim 19, line 1, insert the word "cDNA" after the word "chitinase".
- G) In claim 19, line 2, delete "SEQ. ID. No. 1" and replace with "SEQ ID NO:1".
- H) In claim 19, line 3, delete the phrase "corresponding to" and replace with "that encodes".
- I) In claim 19, line 4, delete "SEQ. ID. No. 2" and replace with "SEQ ID NO:2".
- J) In claim 19, line 5, delete the phrase "corresponding to" and replace with "that encodes".
- K) In claim 19, line 6, delete "SEQ. ID. No. 3" and replace with "SEQ ID NO:3".
- L) In claim 19, line 9, delete the phrase "cDNA and".
- M) In claim 20, line 1, delete "a".
- N) In claim 20, line 6, delete "SEQ. ID. No. 4" and replace with "SEQ ID NO:4".
- O) In claim 20, line 9, delete "SEQ. ID. No. 5" and replace with "SEQ ID NO:5".

Art Unit: 1652

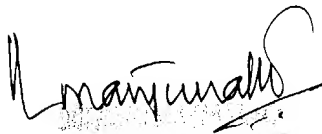
*Allowable Subject Matter*

Claims 13-20, 23-24 are allowed.

The following is an examiner's statement of reasons for allowance: Following a diligent search it was determined that the prior art neither teaches nor suggests a cDNA encoding a winter wheat chitinase as claimed in claims 13-20, 23-24.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The Examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306 for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.



Manjunath N. Rao  
June 4, 2004